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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY Sara Fission ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2017-030159

14 **TOU CHOUA VANG, M.D.**
15 4929 E. Kings Canyon Rd.
16 Fresno, CA 93727

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. A 83557,**

Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about June 11, 2003, the Medical Board issued Physician's and Surgeon's
25 Certificate Number A 83557 to Tou Choua Vang, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on June 30, 2019, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 “(b) Gross negligence.

4 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
8 that negligent diagnosis of the patient shall constitute a single negligent act.

9 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 “(d) Incompetence.

15 “(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 “(f) Any action or conduct which would have warranted the denial of a certificate.

18 “(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of the
21 proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board.”

25 6. Section 2262 of the Code states:

26 “Altering or modifying the medical record of any person, with fraudulent intent, or creating
27 any false medical record, with fraudulent intent, constitutes unprofessional conduct.

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1 "In addition to any other disciplinary action, the Division of Medical Quality or the
2 California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars (\$500)
3 for a violation of this section."

4 7. Section 2264 of the Code states: "The employing, directly or indirectly, the aiding, or
5 the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to
6 engage in the practice of medicine or any other mode of treating the sick or afflicted which
7 requires a license to practice constitutes unprofessional conduct."

8 8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
9 adequate and accurate records relating to the provision of services to their patients constitutes
10 unprofessional conduct."

11 9. Section 2286 of the Code states:

12 "It shall constitute unprofessional conduct for any licensee to violate, to attempt to violate,
13 directly or indirectly, to assist in or abet the violation of, or to conspire to violate any provision or
14 term of Article 18 (commencing with Section 2400), of the Moscone-Knox Professional
15 Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the
16 Corporations Code), or of any rules and regulations duly adopted under those laws."

17 10. Section 2408 of the Code states:

18 "Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each
19 shareholder, director and officer of a medical or podiatry corporation, except an assistant
20 secretary or an assistant treasurer, shall be a licensed person as defined in Section 13401 of the
21 Corporations Code.

22 "Notwithstanding the provisions of this section or Sections 13401.5, 13403, 13406, and
23 13407 of the Corporations Code, a shareholder of a medical corporation which renders
24 professional services may be a medical corporation which has only one shareholder who shall be
25 a licensed person as defined in Section 13401 of the Corporations Code. The shareholder of the
26 latter corporation may be an officer or director of the former corporation.

1 "Nothing in this section shall be construed as prohibiting a nonlicensed person from using
2 the business titles of executive vice president, chief executive officer, executive secretary, or any
3 other title denoting an administrative function within the professional corporation."

4 11. Section 13401 of the Corporations Code states, in pertinent part:

5 "(d) 'Licensed person' means any natural person who is duly licensed under the provisions
6 of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the
7 same professional services as are or will be rendered by the professional corporation or foreign
8 professional corporation of which he or she is, or intends to become, an officer, director,
9 shareholder, or employee."

10 12. Section 13401.5 of the Corporations Code states, in pertinent part:

11 "Notwithstanding subdivision (d) of the Section 13401 and any other provisions of law, the
12 following licensed persons may be shareholders, officers, directors, or professional employees of
13 the professional corporation designated in this section so long as the sum of all shares owned by
14 those licensed persons does not exceed 49 percent of the total number of shares of the
15 professional corporation so designated therein, and so long as the numbers of those licensed does
16 not exceed the number of persons licensed by the governmental agency regulating the designated
17 professional corporation..."

18 "(a) Medical corporation.

19 "..."

20 "(3) Registered nurses."

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Gross Negligence)**

23 13. Respondent is subject to disciplinary action under section 2234, subdivision (b) in
24 that he engaged in act(s) amounting to gross negligence. The circumstances are as follows:

25 14. On or about February 12, 2017, a 28-year-old female patient presented to Respondent
26 at Vang Children's Urgent Care, located in Fresno, California. She complained of a possible
27 urinary tract infection due to painful and frequent urination. She also requested a complete blood
28 count (CBC) and Hemoglobin blood test for a medical appointment the following weekend.

1 Respondent charted a contemporaneous note, but edited this note on or about February 14, 2017,
2 while the Fresno Police Department executed a search warrant upon his clinic. In the edited
3 chart, Respondent noted that the patient complained of breast asymmetry, and had no breast
4 discharge. Respondent documented a review of systems, noting a mild sore throat, no coughing
5 (although the patient noted a cough on her intake form), lower abdominal tenderness, vaginal
6 discharge, a question of redness at "private part," and no rashes. Respondent documented
7 unremarkable vital signs, except for slightly elevated blood pressure. Respondent documented a
8 physical examination with mostly normal findings, documenting "asymmetric" breasts and an
9 abdominal exam showing lower abdominal and suprapubic tenderness. Respondent noted a
10 "deferred" genitourinary exam. Respondent performed a urine dipstick test, which showed
11 evidence of a urinary tract infection. Respondent's documented assessment was dysuria (painful
12 urination), urinary tract infection (site unspecified), and suspected exposure to sexually
13 transmitted infection. Respondent provided the patient with a Rocephin injection, which would
14 be effective to treat gonorrhea, a prescription for an antibiotic which would effectively treat
15 Chlamydia, and a prescription for Ciprofloxacin to treat a urinary tract infection. Respondent
16 discharged the patient with instructions to follow up with her own doctor for further evaluation
17 and management, and to call in 3-7 days if her symptoms did not improve, or to go to the
18 Emergency Room. The patient was given a lab slip for a complete blood count, with a diagnosis
19 of "weakness."

20 15. During this encounter, Respondent questioned whether the patient might have a
21 sexually transmitted disease. The patient responded that she had sexual intercourse with a new
22 partner one week earlier. Respondent asked the patient if she had a rash on her upper ribcage.
23 The patient said she did not. Respondent then said, "let me see," and began to lift up the patient's
24 shirt. The patient protested, but Respondent proceeded to lift the patient's shirt anyway.
25 Respondent told the patient that she did not have a rash. Then Respondent began to lift the
26 patient's bra over her breasts, saying that he "needed to see." The patient asked why, and
27 Respondent replied that he was checking for sexually transmitted disease. The patient asked if
28 she could change into a paper gown first, and Respondent said no, and that he would lift her bra

1 for her. He then lifted the bra over the patient's breasts, and began to rub and squeeze the
2 patient's breasts together. The patient asked Respondent what he was doing, and he said that he
3 had to feel the breasts "to make sure she was okay." Respondent told the patient that one breast
4 was "lumpier" than the other. Respondent then stated that he had to check for "drainage," and
5 squeezed her nipples. Respondent stated that drainage was a sign of sexually transmitted disease,
6 and told the patient that she did not have drainage. Respondent then said he needed to check the
7 patient's pelvic area. Respondent pressed on the patient's vagina and lower stomach area.
8 Respondent then stated "okay, you're good," and walked out of the examination room. No
9 female chaperone was present during this encounter.

10 16. Respondent returned shortly thereafter, and asked the patient if she thought she had
11 Chlamydia. The patient said no, she had no signs of Chlamydia other than pain on urination.
12 Respondent asked the patient if her "lips" were red, and the patient said no. Respondent then
13 pressed on the patient's vaginal area, over her clothes, and said, "right here." Respondent then
14 began trying to pull the patient's pants down. The patient said no, and that she did not feel
15 comfortable. Respondent persisted, and pulled the patient's pants and underwear down halfway,
16 while the patient protested. The patient's vagina was exposed. Respondent attempted to spread
17 the patient's vaginal lips apart with his gloved hands, as the patient said "no, no, no." Respondent
18 then pulled the patient's pants and underwear all the way down to her ankles. Respondent
19 inserted three fingers into her vagina, and said he was checking for pelvic inflammatory disease.
20 The patient said "no, no, no." Respondent pressed upwards on the inside of the patient's vagina,
21 while pressing down on her stomach, and moved his fingers from side to side inside of her
22 vagina. Respondent then "jammed" his fingers further inside the patient's vagina, and asked if it
23 hurt. The patient repeatedly stated that it was painful, and asked Respondent to stop. Respondent
24 did not stop, but continued to move his fingers in and out of the patient's vagina. The patient
25 repeatedly asked Respondent to stop, and asked him what he was doing. After moving his fingers
26 in and out of the patient's vagina several times, Respondent stopped and again rushed out of the
27 examination room. No female chaperone was present during this encounter.
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17. The standard of care requires that a male physician, conducting a physical examination of a female patient's breasts and genitalia, have a female chaperone present. The standard of care for such an examination requires that the physician allow the patient to remove her own clothing, be properly draped, and be supine on an exam table. The standard of care for a pelvic examination requires that the physician use stirrups, to fully inform the patient of the reason for the exam, to obtain the patient's permission to proceed, to be gentle, and to stop when requested by the patient. Respondent's failure to do any of the above, collectively and individually, represent instances of gross negligence.

18. The standard of care requires that a physician conduct examinations that are medically indicated. A rash on the chest is not related to a urinary tract infection or a sexually transmitted infection. Respondent's examination of the patient's chest was thus not medically indicated, and performing such an examination in this case represents gross negligence.

19. Respondent failed to document the pelvic examination he performed, and inadequately documented the breast examination. These failures represent gross negligence.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

20. Respondent is subject to disciplinary action under section 2234, subdivision (c) in that he engaged in repeated acts amounting to negligence. The circumstances are set forth in paragraphs 13 through 19, above, which are incorporated here by reference as if fully set forth. Additional circumstances are as follows:

21. The standard of care for diagnosis and treatment of a sexually transmitted disease, where a young female patient presents with pelvic pain and painful urination, requires that a pelvic exam with a speculum be performed. The physician must visualize the endocervix and collect a specimen with a cotton swab. Alternatively, a urine specimen may be analyzed, provided that the urine is collected without prior genital cleansing, and that only the first 30 milliliters of urine are collected, to ensure that the urine specimen contains a bacterial sample. Respondent's failure to obtain proper specimens for analysis in this case represents negligence.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Incompetence)**

3 22. Respondent is subject to disciplinary action under section 2234, subdivision (d), in
4 that he committed an act or acts demonstrating incompetence. The circumstances are set forth in
5 paragraphs 14 through 21, above, which are incorporated here by reference as if fully set forth.
6 Additional circumstances are as follows:

7 23. Respondent failed to personally administer the Rocephin shot to the patient, or to
8 counsel her regarding the reason for the shot and its possible side effects. Respondent provided
9 the patient with a prescription for Ciprofloxacin to treat her urinary tract infection, which is no
10 longer a recommended treatment for uncomplicated urinary tract infection because of potentially
11 serious side effects. These failures demonstrate a lack of medical knowledge and represent
12 instances of incompetence.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Dishonest or Corrupt Acts)**

15 24. Respondent is subject to disciplinary action under section 2234, subdivision (e), in
16 that he committed an act or acts demonstrating dishonesty or corruption substantially related to
17 the qualifications, functions, or duties of a physician and surgeon. The circumstances are set
18 forth in paragraphs 13 through 19, above, which are incorporated here by reference as if fully set
19 forth. Additional circumstances are as follows: Respondent intentionally charted "Genitourinary:
20 deferred," whereas in fact Respondent performed a genitourinary examination, albeit one that
21 departed from the standard of care. This intentionally false chart entry constitutes an act of
22 dishonesty or corruption substantially related to the qualifications, functions, or duties of a
23 physician and surgeon.

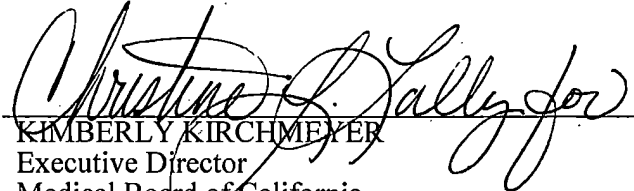
24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Alteration of Medical Record)**

26 25. Respondent is subject to disciplinary action under section 2262 in that he created a
27 false medical record with fraudulent intent. The circumstances are set forth in paragraphs 13
28 through 19, and paragraph 24, which are incorporated here by reference as if fully set forth.

- 1 2. Revoking, suspending or denying approval of Tou Choua Vang, M.D.'s authority to
2 supervise physician assistants and advanced practice nurses;
3 3. Ordering Tou Choua Vang, M.D., if placed on probation, to pay the Board the costs
4 of probation monitoring; and
5 4. Taking such other and further action as deemed necessary and proper.

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7 DATED:
8 December 27, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

11 FR2018102644
12 Vang Accusation with edits from client.docx
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